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Attorneys for Rouse Properties, LLC

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

SHIEKH SHOES, LLC,
a California limited liability company,

Debtor.

Case No. 2:17-bk-24626-VZ

Chapter 11

LIMITED OBJECTION OF ROUSE PROPERTIES, LLC TO DEBTOR'S EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS: (1) AUTHORIZING DEBTOR TO OBTAIN SHORT-TERM VENDOR FINANCING FROM NIKE USA, INC., SECURED BY SENIOR LIEN UNDER 11 U.S.C. § 364; (2) AUTHORIZING USE OF CASH COLLATERAL UNDER 11 U.S.C. § 363; (3) SCHEDULING FINAL HEARING ON MOTION; AND (4) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF (Docket No. 369)

Hearing:

Date: January 30, 2018

Time: 2:00 p.m. PT

Place: Courtroom 1368, Roybal Federal Bldg,
255 E. Temple St, Los Angeles, CA

1 Rouse Properties, LLC and its affiliates (collectively, the “Landlords”), by and
2 through their counsel, Kelley Drye & Warren LLP, hereby file this limited objection (the
3 “Limited Objection”) to the *Debtor’s Emergency Motion for Interim and Final Orders:*
4 *(1) Authorizing Debtor to Obtain Short-Term Vendor Financing From Nike USA, Inc., Secured*
5 *by Senior Lien Under 11 U.S.C. § 364; (2) Authorizing Use of Cash Collateral Under 11 U.S.C.*
6 *§ 363; (3) Scheduling Final Hearing on Motion; and (4) Granting Related Relief; Memorandum*
7 *of Points and Authorities in Support Thereof* (Docket No. 369) (the “Emergency Financing
8 Motion”). In support of this Limited Objection, the Landlords respectfully state as follows:

10 **BACKGROUND**

11 1. On November 29, 2017, the Debtor filed a voluntary petition for relief
12 pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with this
13 Court. The Debtor remains in possession of its property and continues to manage its business as
14 debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

16 2. The Landlords are the owners or managing agents for the owners of
17 numerous shopping centers located throughout the United States. The Debtor leases retail space
18 from the Landlords pursuant to written leases (each, a “Lease,” and collectively, the “Leases”)
19 for, among others, the stores at the locations listed on the attached Exhibit A (collectively, the
20 “Leased Premises”). The Leased Premises are located in shopping centers as that term is used in
21 section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081 (3d
22 Cir. 1990).

24 3. On January 26, 2018, the Debtor filed the Emergency Financing Motion.
25 On January 29, 2018, the Debtor filed a notice advising that the Court scheduled a hearing on the
26 Emergency Financing Motion for January 30, 2018 at 2:00 p.m. (PT) and requiring objections to
27 be filed by January 30, 2018 at 12:00 p.m. (PT) (Docket No. 371).
28

4. The Landlords will attempt to reach a consensual resolution of their concerns with the Debtor; however, if such a resolution is not possible, the Landlords intend to proceed with this Limited Objection at the hearing on the Emergency Financing Motion.

OBJECTION

5. The Bankruptcy Code requires that the Debtor timely pay its post-petition rent and additional rent obligations to the Landlords pursuant to section 365(d)(3), which provides:

The trustee shall timely perform all the obligations of the debtor... arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.

11 U.S.C. § 365(d)(3).

6. The Emergency Financing Motion, if granted, would prohibit the Debtor from satisfying its obligations to the Landlords under section 365(d)(3) of the Bankruptcy Code to timely pay rent for the months of February 2018 and, potentially, March 2018. The Debtor should not be permitted to violate its obligation to timely pay the Landlords rent and additional rent solely for want of financing and inventory from Nike. If granted, the Emergency Financing Motion should be modified to provide for payment of February 2018 rent as one of the Essential Expenses¹ of this case.

7. In addition, the Landlords respectfully assert that the Court should not approve any waiver of the estates' rights under sections 506(c) and 552(b) of the Bankruptcy Code. Section 506(c) of the Bankruptcy Code allows a debtor to charge the costs of preserving or disposing of a secured lender's collateral to the collateral itself. 11 U.S.C. § 506(c). This provision ensures that the cost of preserving a secured lender's collateral is not paid from

¹ Capitalized terms used, but not defined, herein shall have the meanings ascribed to them in the Emergency Financing Motion.

1 unsecured recoveries. See, e.g., *Precision Steel Shearing v. Fremont Fin. Corp. (In re Visual*
2 *Indus., Inc.)*, 57 F.3d 321, 325 (3d Cir. 1995) (stating, “section 506(c) is designed to prevent a
3 windfall to the secured creditor”); *Kivitz v. CIT Group/Sales Fin., Inc.*, 272 B.R. 332, 334 (D.
4 *Md.* 2000) (stating, “the reason for [section 506(c)] is that unsecured creditors should not be
5 required to bear the cost of protecting property that is not theirs”). Similarly, the “equities of the
6 case” exception in section 552(b) of the Bankruptcy Code allows a debtor, committee, or other
7 party-in-interest to exclude postpetition proceeds from prepetition collateral on equitable
8 grounds, including to avoid having unencumbered assets fund the cost of a secured lender's
9 foreclosure. 11 U.S.C. § 552(b).

11 8. Any liens granted to Nike must attach only to the proceeds of the Debtor’s
12 leasehold interests, not to the leases themselves. The imposition of direct liens on leases runs
13 counter to the provisions in the leases that subordinate the leases and any related liens to any
14 existing or potential liens granted by the landlords against the leased premises. The Emergency
15 Financing Motion cites no authority that would authorize the Court to render any lease provision
16 unenforceable, including lease subordination or anti-lien language. It is settled law that a trustee
17 “takes the contracts of the debtor subject to their terms and conditions.” *Thompson v. Texas*
18 *Mexican Railway Co.*, 328 U.S. 134, 141 (1946). Accordingly, to the extent the prohibited by
19 the leases, any new liens granted by the Emergency Financing Motion must be subordinated to
20 any existing or potential liens against the affected leased premises.

23 **JOINDER**

24 9. To the extent not inconsistent with this Limited Objection, the Landlords
25 join in the objections to the Emergency Financing Motion asserted by other landlords.

1 **WHEREFORE**, the Landlords request that the Court enter an order: (i) denying
2 the Emergency Financing Motion unless modified as set forth herein; and (ii) granting such other
3 and further relief as the Court deems just and proper.

4 Dated: January 30, 2018

5
6 **KELLEY DRYE & WARREN LLP**

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26 *Attorneys for Rouse Properties, LLC*
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28

EXHIBIT A

Rouse Properties, LLC And Its Affiliates

<u>Store No.</u>	<u>Mall Name</u>	<u>Location</u>	<u>Landlord</u>
142	Shops at Carlsbad	Carlsbad, CA	RPI Carlsbad, L.P.
1240	NewPark Mall	Newark, CA	NewPark Mall LP
	Chula Vista Center	Chula Vista, CA	Chula Vista Center, LP
	Southland Mall	Hayward, CA	Southland Mall, L.P.
	West Valley Mall	Tracy, CA	Tracy Mall Partners, LP

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is **Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178.**

The foregoing document described as the **Limited Objection of Rouse Properties, LLC Debtor's Emergency Motion for Interim and Final Orders: (1) Authorizing Debtor to Obtain Short-Term Vendor Financing From Nike USA, Inc., Secured by Senior Lien Under 11 U.S.C. § 364; (2) Authorizing Use of Cash Collateral Under 11 U.S.C. § 363; (3) Scheduling Final Hearing on Motion; and (4) Granting Related Relief; Memorandum of Points and Authorities in Support Thereof** will be served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On **January 30, 2018**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

See attached Exhibit 1.

☒ Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On **January 30, 2018**, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail and/or with an overnight mail service addressed as follow. *Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.*

Via Overnight Mail:

The Honorable Vincent P. Zurzolo
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street, Suite 1360
Los Angeles, CA 90012

United States Trustee
915 Wilshire Blvd.
Suite 1850
Los Angeles, CA 90017

Amy M Williams
Williams Legal Advisory Group, LLC
169 Ramapo Valley Road, Suite 106
Oakland, NJ 07436

☐ Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL

(state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. *Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.*

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

01/30/18

Jennifer D. Raviele

/s/ Jennifer D. Raviele

Date

Type Name

Signature

EXHIBIT 1

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